

Water Pollution Control Advisory Council (WPCAC) Meeting
May 5, 2005 9:30 a.m. – 1:00 p.m.
Director's Conference Room 111 Metcalf Building

Attendees:

Council Members:

Terry McLaughlin, Smurfit-Stone Container Corp.
Barbara Butler, Billings Solid Waste Division
Scott Seilstad
Peggy Trenk, Montana Assn of Realtors
Shannon Dunlap, Golden Sunlight Mines, Inc.
Robert Willems, Soil & Water Conservation District

Other Attendees:

Bob Bukantis, Department of
Environmental Quality (DEQ)
Bonnie Lovelace, DEQ
Chris Levine, DEQ
Claudia Massman, DEQ
Dean Yashan, DEQ
Kari Smith, DEQ
Art Compton, DEQ
John Koerth, DEQ
Mike Cormier, Maxim
Technologies
Scott Summers, Energy Lab
Bud Clinch, MT Coal Council
Don Allen, WETA
Gail Abercrombie, MT Petroleum
Assn.
Ellen Engstedt, MT Wood
Products Assn.
Mark Story, Gallatin National
Forest Service
Pat Lorello, Luzenac

Call to Order

Chairman Terry McLaughlin called the Water Pollution Control Advisory Council meeting to order on May 5, 2005 at 9:30 a.m. John Wilson has resigned from this Council; therefore the Council does not have a representative for conservation organizations at this time. A round of introductions was conducted.

Approval of Agenda

Terry McLaughlin asked for additions to the agenda. There were no changes or additions to the agenda.

A motion to approve the agenda as listed was made and seconded. The motion carries and the agenda has been approved.

Approval of Minutes for October 28, 2004 Council Meeting

Terry McLaughlin said the Council received the draft minutes and had an opportunity to provide feedback/comment before this meeting. There were no comments or edits from the Council.

A motion to approve the October 28, 2004 minutes was made and seconded. The motion carries and the October 28, 2004 minutes have been approved as written.

Briefing Items

Legislative Update for Water Quality Act Items

Art Compton said there were some Water Quality Act (WQA) bills of note that passed. Most of the water quality legislation the Department followed only made it as far as the House of Natural Resources Committee. The following bills were passed by the legislature. HB22 established a biennial fee that has to be paid by water right holders to the Department of Revenue. The Water Court will use this fee to fund the water adjudication effort. DEQ does have some water rights and will be assessed this fee; no rulemaking is necessary. HB236 makes the Clark Fork River Basin Task Force permanent. The bill provides specific direction on the Task Force's responsibility in the future, which includes identifying data gaps and advising government agencies about water management and permitting activities in the Clark Fork basin. HB379 creates a perpetual fund for the operation of water treatment facilities at the Zortman Landusky mine. The bill provides that the Department transfers \$1.2 million/year from the Orphan Share account (a remediation account that funds clean-up projects in which the responsible party no longer exists) into a trust fund until the balance reaches just under \$20 million, which is projected to occur in 2018. Once the target amount has been reached, the \$1.2 million transfer ends. SB320 addresses CAFOs, which Bonnie Lovelace will cover. HB431 is an SRF bill that makes it easier for local landowners to overturn a new sewer project. This bill changed from requiring 75% to only requiring 50% of the local landowners to overturn a city commission when they voted to adopt a sewer development project.

Senate Joint Resolution 7 urges the Governor to negotiate an operating agreement with the Premier of the province of British Columbia on border water quality issues in relation to resource development close to the border. This resolution called for the International Joint Commission to conduct a comprehensive environmental assessment on the impacts of developing hydrocarbon resources on trans-boundary resources such as the North Fork of the Flathead River. HB429 was an enforcement bill that established uniform penalty factors for administrative and civil penalties under many Montana statutes; the Water Quality Act was one of them. This bill established uniform penalty factors by giving a standard way of calculating fees. The bill also gives the Department the authority to contract with a collection service to collect delinquent fees and penalties and increases the statute of limitation for penalties from one year to two years.

The following bills were not passed in the 2005 legislation. HB491 was a bill that would have dealt with water quality monitoring in areas of coal bed methane (CBM) development. If it had passed, this would have required DEQ to do the monitoring if there was more than one CBM discharge permit in an area. SB336, which involved CBM water storage and disposal ponds and a bonding mechanism to ensure the reclamation of these ponds, did not pass. SB236 dealing with water quality standards proposed that the Board of Environmental Review (BER) have the

same authority for carcinogens as it has for other water quality constituents in WQB-7. This bill would have allowed the Board to adopt water quality standards that are more stringent than federal requirements, but it did not pass. SB376, the Gallatin River ORW EIS bill, did not pass but would have secured \$250,000 in firm funding for DEQ to do the EIS in a one-year maximum timeframe. SB173 would have provided building setbacks of 30 yards back from the high water mark or the edge of the flood plain for smaller streams (class 2 waters) and 100 yards back from the high water mark or the edge of the 100-year flood plain for class 1 waters. No structures or buildings could be put in these streamside management corridors absent of specific action by the local planning board.

TMDL Update

Dean Yashan said that for TMDL development in Montana there was a lawsuit that originally required the state to address more than 900 waterbodies and more than 1,600 waterbody/pollutant combinations by 2007. The lawsuit is based on the 1996 303(d) list. “Addressed” means that there is sufficient credible data (SCD) that shows an impairment or threatened condition for a particular pollutant that would require a TMDL to be developed for that waterbody. If the data shows no impaired or threatened condition for that pollutant of concern then no TMDL is required but the justification must be documented. Under a recent settlement agreement associated with this lawsuit, the Department now has until 2012 to complete these TMDLs. There is also a consent decree requirement to complete all reassessments by the 2006 303(d) list. There were over 900 waterbodies on the 1996 303(d) list; during the initial SCD review, approximately half of the waterbodies were found to have SCD to be able to make a determination on the impairment of the beneficial use. The remaining half needed to have additional reassessment work done to be able to make the impairment determination.

Thus far the Department has addressed over 200 waterbody/pollutant combinations, most via TMDL development. The Department is using a watershed approach where there are more than 90 planning areas, in addition to large river TMDL development considerations. The process consists of a DEQ and EPA team approach and the sharing of certain responsibilities. EPA has been pursuing development of TMDLs in some areas that made sense for them to do the work and DEQ is taking on a large portion of the work elsewhere. Currently the Department is doing 100-200 TMDLs per year through 2007 (Phase I) and it is projected that over 200 TMDLs per year will be done in 2008 through 2012 (Phase II). Phase I efforts involve process development, template development and experience gained in working with the various waterbody types in the different parts of the state.

CAFO/AFO Rule Update

Bonnie Lovelace said that SB320 contained provisions that were specific to concentrated animal feeding operations. This bill was the result of a lawsuit that occurred in 2003 where the Department was challenged on its general permit action for these CAFO/AFOs; specifically the MEPA document itself was challenged. The court ruling gave the Department two options: 1) if the Department wanted to use a general permit, an EIS must be conducted; or 2) use individual permits. The Department did not have the funding to do an EIS so all the general permits were converted to individual permits. Due to the significant amount of additional work required in converting the permits, the Department added up the amount of work and used the minor industrial item fee structure. This increased the application fees from \$450 to \$2,500 and the

annual fees went from \$300 for larger operations to \$1,000. SB320 overrode the court order so the Department does not have to do an EIS unless the Department in the future determines that one is needed for a specific operation or action and took the fees out of the rulemaking process and put them into statute. A new general permit will be prepared that will align with the rulemaking this Council has seen. Applications processed this calendar year are covered under this new fee structure. The Department is issuing refunds to those that paid the higher fees. The general permit fees were changed to \$600 for both the application fee and annual fees in the statute.

The CAFO/AFO rule package went out to the Council at a previous meeting, the Department initiated rulemaking with BER, held a comment period, and prepared a rule adoption packet. On February 28th a lawsuit was ruled upon that affected the federal rulemaking. The Department was updating the AFO rules to match and be as stringent as the latest federal requirements. The court upheld the requirement that runoff from land application as part of an AFO is subject to regulation as a discharge point. The court upheld the requirement in the federal regulations that storm water discharges from land applications from those sites may be exempt from a permit if it is strictly storm water and not effluent. The court upheld the best available technology requirement set for CAFO's, recognized that effluent limitations expressed as non-numeric was ok, all the nutrient management plan requirements that were a part of those operations were upheld and clarified as expectable effluent guidelines. Further, those nutrient management plans are not only effluent guidelines but have to be made part of the permit and public comment needs to be taken on each nutrient management plan. The Department currently has a 30-day review period in which the Department takes comment on the general permit, but does not take public comment on the individual authorizations under that permit. The court remanded the rule back to EPA and in some cases used the language "vacate" in the rule but did not underline and identify the parts of the rule. This leaves a question of what is still in the books as federal rule and what isn't. It is in EPA's hand to sort this out and indicate what is still in the books. This action has effectively stopped the Department's rulemaking given that the court had indicated that certain rules were vacated. The Department is trying to get EPA to give clear direction to the states on what EPA believes is still in the rule. Unless the Department is granted an extension or adopts the rule at the June 3rd BER meeting, the rulemaking will die and the Department will have to start over with the rulemaking process. The rules on rulemaking say that rulemaking must be completed within a six-month period. One item in the court case that will affect a change in current rulemaking is that the court ruled that the "duty to apply" was struck. This said that everyone who meets the definition of an animal feeding operation, whether or not you discharge, would be required to get a permit. The court said that there has to be a discharge, so this part will have to change in the Department's rulemaking. The Department had already struck out the part that said a person could ask for a demonstration of no potential to discharge when the first ruling occurred.

Action Items

New Council Chair

Terry McLaughlin said the rules for this Council indicate that at the first meeting of each year, the Council has to move towards the selection of a chair.

Peggy Trenk would like to recommend Terry McLaughlin to continue to serve as chair until a new Council is in place.

Terry McLaughlin would like to nominate John Schwarz for the position of Council chair.

Robert Willems would like to nominate Terry McLaughlin for the position of Council chair and John Schwarz for vice chair.

Scott Seilstaid would like to nominate Terry McLaughlin for the position of Council chair.

Nominees for chair were John Schwarz and Terry McLaughlin. A vote for chair was conducted and Terry McLaughlin abstained from voting. All present voting Council members voted for Terry McLaughlin for chair. Terry McLaughlin has been elected to remain as chairman until 2006.

The nominee for vice chair was John Schwarz. A vote for vice chair was conducted. All present Council members agreed that John Schwarz should be the vice chair for the Council. By acclamation, John Schwarz is now the vice chair for the Council.

MPDES Fee Rules

Kari Smith said the Department is seeking recommendation from the Council that the Department proceed to the Board to initiate rulemaking for the MPDES water quality permit application and annual fee increase. Recently the permit program has experienced some changes in the TMDL process and water quality standards that result in changes in the permitting program. Additional FTEs were given to the permitting program that would help address this additional workload. The fees charged to the permit holders must be sufficient to support a full water quality program. The fees are based on the legislatively approved budget. During preparation of the fee package, the Department estimated the number of permits that are going to be managed and processed and the amount of work involved with each kind of permit. When the Department looks at issuing a permit, the individuals are evaluated on the discharge volume from the facility, which is calculated into the fee process. In February, there was a time study based on activities the Bureau does in permit development. In April there was a time study based on the amount of hours the staff spends on the different segments and different groups of permits.

An area in the fee rule development the Department will look at will be groundwater, industrial, or other waste. A process will be developed where the size of the industry will be considered to bring some equity to the process. Facilities currently producing 15 million gallons of industrial wastewater are being charged the same as facilities producing 200 gallons of wastewater. Another area the Department is going to look at is the domestic groundwater. Subdivisions of 400 homes producing 200-500 thousand gallons per day discharging to ground water require a different level of work and expertise and number of employees than a development that is producing less than 15 thousand gallons per day discharge to groundwater from a 15 home subdivision. Another area to look into is industrial facilities, both major and minor, and the Department needs to add clarification between facilities that are renewing permit coverage over the 5-year cycle vs. facilities requiring a new permit.

The Department was unable to complete a final rule packet for this Council meeting and would like to request that the Council add an additional meeting/conference call/email process when the Department does finish the final rule package.

Terry McLaughlin asked if the fees were for the facility or per outfall? Is this for the application or the annual fees?

Kari Smith said that the fees are a per outfall charge with a maximum charge of 5 outfalls. The fee changes will be for both application and annual fees.

Terry McLaughlin asked if it would be an adjustment to each individual category based on work involved instead of a straight uniform percentage increase?

Kari Smith said the Department is going to consider all aspects. In some areas there will be specific changes to certain categories but the over all process will be reviewed as a whole. There were more major facilities when the rules were first adopted than there are now so they should not be included in the major bracket, which will change the fees for those categories.

Terry McLaughlin said that if the Council were to try to accommodate the Department by having a conference call, it would be incumbent upon the Department to provide the Council with a distilled version of the rule packet. Bob Bukantis could work with the Council and schedule a conference call within the first 10 days of June to allow the Department time to incorporate the Council's recommendation before submitting the packet to the Board.

Bonnie Lovelace said the Department would be very specific in anything that is provided to the Council for the initiation of rulemaking. Under Montana Code Annotated §75-5-516 it clearly indicates how to set fees. This statute indicates how the fees are to be used, what to collect fees for, and a cap on the amount to be collected. Fees must be sufficient to pay the department's estimated cost of conducting all tasks after subtracting a few amounts, how to handle violations, the appeal processes, and the suction dredge fees. Within the legislation for budgeting, the Water Protection Bureau received 3 new FTEs and other FTEs that were transferred to the Water Protection Bureau from elsewhere in the Department and are known factors that can be targeted for calculating the fees. In the legislatively approved bill, the Water Protection Bureau was provided spending authority out of this account to pay for the Gallatin ORW EIS. That is \$250,000 the Department has spending authority for but has no surpluses in the account. The Department is given the choice to raise the fees to include that amount or find the money elsewhere. The Department is currently looking elsewhere for the money for the Gallatin ORW EIS. Until the source of this money is determined the Department cannot make a decision on the fee amounts.

Terry McLaughlin asked if it was normal for ORW EIS's to be a part of the application/annual fee process?

Bonnie Lovelace said this was not a normal procedure or a normal part of permitting and this was the first time a situation like this has arisen. The original Department budget had a line item that would have been for the CAFO permit EIS, but was removed when the CAFO EIS was

no longer necessary. This may have resulted in a belief that there was money available to go towards the Gallatin River ORW EIS. This account does not have the money and the CAFO EIS would have been included in the rulemaking to increase fees.

Peggy Trenk asked if anything had changed this legislative session that would require more of a mandate for the Department to do the Gallatin EIS? Is there any directive requiring the Department to complete this EIS this biennium?

Bonnie Loveless said there was not a separate directive that would require the Department to complete the EIS in a specified amount of time. The only item through this session that has anything to do with the Gallatin OWR EIS is the spending authority budget item.

Peggy Trenk said that it may be feasible that the Department does not have to come up with the money right now to do the EIS. Is \$250,000 enough money to complete a good EIS? What if you do raise the fees and find out that the \$250,000 is not enough to complete the EIS?

Bonnie Loveless said that the Department is obligated under the Board order for the petition to prepare an EIS. If the Department chooses to hold off on doing the EIS, there may be ramifications of that decision that the Department may be challenged on. The Department cannot spend the money out of the fee account absent a legislative approval. There is a possibility of finding funding from other sources that would cover anything over the approved \$250,000. It is the Department's goal to not fund the EIS through the fee account.

Terry McLaughlin asked if there is any consent decrees or standing orders other than BER mandates?

Bonnie Lovelace said there are no other mandates outside of BER's for the Department to do the EIS. A petition for the designation process was filed with BER, the Board accepted that petition, and directed the Department to go forward with an EIS so a designation may be determined. There are no court cases or consent decrees at this time. The Department has not acted on the EIS yet because of the lack of funding.

Terry McLaughlin asked when the Department is going to make a decision as to how to establish the proposed fee increases? Who made the petition to the Board?

Bonnie Lovelace said the decision must be made within the next few weeks in order for the Department to write a rule and provide it to the Council. American Wildlands made the petition.

Terry McLaughlin said it is not right that the permitted dischargers, by virtue of their application fees and annual fees, have to pay for a special interest group's interest.

Bonnie Lovelace said that after the petition was filed, the 2003 legislative session closed that gap for any future petition and indicated that the proponents would be responsible for paying any associated costs.

Terry McLaughlin asked if it can be handled in the fee structure on a one-time basis and adjusted for future years to a normal fee structure once it has been paid for?

Bonnie Lovelace said that the proposal of the Department is to address this as a line item, as a surcharge, that would only be charged one time. This would allow the fees to be set at the amount they should be.

Temporary Water Quality Standards for New World Mining District

John Koerth said the Department is involved in the New World clean up, which is being performed by the Forest Service. The buy-out of Crown Butte interests in the New World Mine project required a consent decree because the Department was a party to the enforcement case that was going on and assigned the Department certain responsibilities. The Department is involved through the temporary water quality standards that are in place on the streams and the consent decreed requirement to certify completion provided the Department is able to by going through the state superfund process. The Department has conditioned the consent not to sue the United State based on the ability to certify that the clean up does meet the state superfund standards. These standards are based on the mean of all the water quality measurements of total recoverable metals prior to clean up plus two standard deviations. The standards were adopted for 15 years and the Department is required to review them every three years.

Terry McLaughlin asked why was two standard deviations used?

Chris Levine said the waters being addressed had metals that were in excess of the WQB-7 standards by a great amount. Using the background values it required two standard deviations to give a value that would most likely not be exceeded during the clean up efforts. As the clean up proceeds the values are expected to come down.

John Koerth said that part of the temporary standards is an implementation plan. The Forest Service submitted an implementation plan that was revised at the last triennial review. A table on page 15 of the progress report shows the parameters and where the clean up effort is in regards to the temporary standards. Table A-1 shows the standard calculations prior to 1999, from 1989-2004 and 1999-2004 to show the results of the clean up and help give an idea of what standards would be best to use.

Mike Cormier said his presentation is to discuss the progress report and show the members the results of the project to date. The New World Mining District covers about 40 square miles northeast of Yellowstone National Park. There are three streams involved in the temporary standards: Fisher Creek, Daisy Creek, and the headwaters of Stillwater River. All the District property must be cleaned up first before the private property is addressed. This area has a lot of mining waste sites or impacted sites that result in excess metals getting into the streams through rain and snow runoff.

The clean up activities began in 1999 with site characterization and planning, which lead to identifying and ranking 150 waste sites in the district. Most of the 150 sites are small prospects with very small waste dumps that are scattered over the 40 square miles. The first clean up was started in 2001 and involved removing 32,500 cubic yards of waste from seven of the higher ranked sites and reclaimed 4.6 acres. This amount represented 9% of the total district

property waste. The decision was to take those materials to an engineered repository that is on Forest Service property near the town of Cooke City. The next big project was at the McLaren Pit, which represented 67% of the total waste rock and was an 11-acre reclamation project. This waste rock was capped with an impermeable cap to prevent leaching of metals by rain and snow. The third project was started in 2003 and involved a complete closure of the Glengarry mine. The discharge from the Glengarry mine was about 56 gallons per minute and carried about 20% of the copper load and 65% of the iron load to Fisher Creek. Removing this source would reduce the copper load by 90% during low flow. Part of the reason for using two standard deviations had to deal with the difference in concentrations during high flow and low flow. In 2004 a small project was done to address 4 sites in Miller Creek that had been identified as being close to surface water and carried directly or had runoff into that water. This problem was addressed by rerouting the water and amending the area with lime to establish vegetation and closed some of the open adits that were in the Miller Creek drainage.

The projects scheduled for 2005 and 2006 involve placing a 5.5 acre impermeable barrier cap over a waste deposit and a sulfite deposit to prevent the release of copper and other metals into Fisher Creek. Waste rock dumps from 4 other locations will be removed from Fisher Creek and Miller Creek and placed into the repository. The remaining adit discharges are being evaluated because some of the discharges still have perennial flow that goes into surface waters. Other options for addressing those discharges are being looked into; including plugging them and other treatment options.

The sampling sites are sampled three times per year: April (winter pre spring runoff events), June (high flow events) and August. This gives a bracket of the quality of water in the area throughout the year. Looking at figures 3 through 9 in the progress report indicates where the historic samples and current samples fall in regards to the temporary standards, the actual standards, and how flow affects the metal concentrations. While the metal concentrations are not at their lowest, there are signs of improvements at the stations downstream. During low flow some of the lowest concentrations of metals in Daisy Creek and at high flow the samples are at the lower end of what has been measured. As a result of the cap, the groundwater below McLaren pit has not shown any changes in metal concentrations.

Terry McLaughlin asked what percent of the total project has been completed?

Mike Cormier said that the project is approximately 70% complete. Como Basin is a big part of what is going to happen in Fisher Creek. Fisher Creek is only about 40% complete. In Daisy Creek, McLaren Pit cap was the biggest project so it is about 80% complete. Some of the adit discharges in the Daisy Creek area may be addressed by the Forest Service resulting in additional work in this area. Not all the decisions on what is going to be addressed have been made so it is difficult to determine how much work is left.

Terry McLaughlin said the Council is being asked by the Department to make a recommendation on the triennial review and evaluate if it would warrant having an adjustment to the temporary water quality standards. It is clear that there are signs of improvement but the project is not yet complete and the samples are not that far below the temporary standards yet. This project is only 6 years into a 15-year project. As a recommendation it may be premature to adjust the temporary standards downward at this time and the Council should review the standards at the next triennial review.

Bob Williems agrees with the recommendation.

Shannon Dunlap asked when was the Department going to start looking at the statistical evaluation of the seasonality and when the work was going to be done?

Mike Cormier said the statistical evaluation to determine changes that are being affected by the clean up would take a different approach than what was used to calculate a temporary standard. This statistical evaluation will not be valuable until there are a few years of data collected after the closures of the major pollution sources. The time frame on this would be a year after the work is completed on any audit discharges, which would not be until 2008. If DEQ requested it, this process could be moved up.

A motion was made and seconded that the Department would bring the triennial review to the Board at their next meeting for them to conduct the triennial review of the temporary water quality standards. The Council's recommendation is that the Board considers not lowering those temporary standards at this time. All approved the recommendation and the motion carries.

Triennial Review of Montana's Water Quality Standards

Bob Bukantis said the triennial review of the state's water quality standards consists mostly of formulaic changes, administrative changes and changes needed to comply with federal law. The primary purpose of the review is to keep the standards current and cleaned up. There was some informal public outreach done prior to this Council meeting, which involved a press release, sending the information to the interested water quality standards list and putting the information up on the internet. A summary of the changes is outlined in the memorandum that was sent out to the Council.

Most of the changes in the water quality standards are the result of EPA's revision of the methodology for calculating human health criteria. The Department can develop the science for setting water quality criteria to protect human health and aquatic life or can depend on what EPA sets the standards at. The general course of action in almost all cases is for State's to adopt what the Federal Agency has set for standards. The legislature in Montana does set some of the risk levels for some of the standards; i.e. carcinogens. The Department then selects the appropriate value that reflects that cancer risk. A big change that caused a lot of the numbers to become more stringent was EPA's change in the assumption of the amount of fish that was consumed per person per day, which went from 6.5 grams/day to 17.5 grams/day. For those parameters that have bio-concentrating effects, this resulted in reducing the standard to be protective of human health. A lot of the metal values changed in the table because the toxicity values are related to the hardness of the water. There is now a consistent calculated value for hardness set at 25 mg/L. The standard for these metals has not changed but some of the values in the table have changed because of their example values.

The required reporting value (RRV) has been updated to reflect current analytical methodologies. In some cases the standard was lower than the RRV. The RRV is a value that requires the lab to be able to reach a certain detection limit that is low enough that it is meaningful in terms of determining if the standards are being met. Some parameters are low enough that the labs in Montana cannot meet the RRV and the samples must be sent to out-of-state labs. The arsenic MCL has been changed by EPA and on January 23, 2006 this standard

will come into effect under the Montana Water Quality Act as indicated by footnote 29 in the water quality standards. The human health standard for bacteria has been changed from fecal coliform to E-coli because it was determined that E-coli was a better indicator of potential for disease transmission. The current water quality standards for most classes of water are only in effect when the water is at 60° F or above. To make it easier to determine when these standards apply, the new bacteria primary standards will only be in effect from April 1st to October 30th. For those waters that do require the seasonal limit there will now be a back up bacteria standard in place for the colder months. The change from fecal coliform to E-coli does not change the stringency of the standard as explained in the E-coli fact sheet included in the Councils package. The Department rewrote WQB-7 to make the introduction more user friendly. EPA is recommending modification to the methods for expressing dioxin that the Department is proposing to adopt. Changes to the other parts of the ARM to reflect the change from WQB-7 to DEQ-7 are proposed. Some general housekeeping things are being proposed to clean up, correct, and clarify some issues. A placeholder has been added and some definitions have been clarified in regards to ORWs in anticipation of the Gallatin ORW EIS.

Terry McLaughlin asked if, on page 1 of the memorandum under item two, has EPA already adopted the freshwater fish consumption rate of 17.5 mg/L?

Bob Bukantis said that EPA has already adopted the higher fish consumption rate.

Terry McLaughlin asked how did the change in the consumption rate apply to the bio-concentration factors and how significant an affect does it have on the water quality standards? Even though a numerical standard is adjusted downward because of this manipulation of the fish consumption rate, it does have a bearing on water quality standards without having the benefit of rigorous study as to whether or not that reduction from a toxicological standpoint, stands up with the support of any studies. Montana usually tends to adopt federal criteria as a matter of course because of the lack of funding to do scientific research. The Counsel has not had enough time to determine what this change means relative to every item in WQB-7.

Chris Levine said that for all of the parameters, especially the organic carcinogens that have some form of bioaccumulation factors, the Department does look at two routes of exposure, through fish that have been exposed to water with these chemicals and through the water itself. The science is that a certain amount of a chemical regardless of how a person gets it has an effect. With carcinogens, there is no threshold value, so any amount of a carcinogen increases a person's risk of cancer. The legislature has stipulated what the cancer risk is to be set at. The Department of Agriculture does surveys of consumption of foods using data from national surveys from 1994-1996. The 17.5 grams/day refers to the ninetieth percentile, or that 90% of the people eat 17.5 grams/day or less. Montana's standards are designed to be protective of the "sensitive groups." The current amount of 6.5 grams/day of fish had been determined in the same way and represented the ninetieth percentile at that time. This number does not target children or other very sensitive groups and is not a subsistence level. The subsistence level of those who eat a lot of fish is 142 grams/day.

Terry McLaughlin said that looking at the numbers it appears that 6.5 mg/day was replaced with 17.5 mg/day and multiplied against the existing standard to end up with a new lower number.

Chris Levine said that the bioaccumulation factor is also a part of the calculations. A high bioaccumulation factor would result in a bigger change in the standard than a parameter that has a low bioaccumulation factor. The formula for carcinogens would be the risk value times the body weight divided by the cancer rate times the bioaccumulation factor times the fish plus the water. The standard is not exactly a simple translation of 6.5 mg to 17.5 mg because of the bioaccumulation factor.

Terry McLaughlin said for dioxins and congeners the numerical value is proposed to go from 13 parts per quadrillion to 5 parts per quadrillion. Does this change in value stem from the change in the fish consumption rate? Is there an appropriate number of zeros listed in the table for the old number and the proposed new number?

Chris Levine said that the change in dioxin value is a result in the change in fish consumption rate. There is an appropriate number of zeros in the tables.

Terry McLaughlin asked if the Department is proposing to adopt the TEF methodology for dioxins?

Chris Levine said that the present method for measuring dioxins uses the TEF method based on the 1989 EPA guidance document. The Department is proposing to go from the 1989 EPA guidance document to the World Health Organization (WHO) TEF tables because they are based on better science.

Scott Summers said that Energy Laboratories would like to go on record as saying that they do not agree with the following analyses: nitrate, nitrite, ammonia, and mercury. For nitrate and nitrite the trigger value is 10 and the MCL is 10 but the RRV is down to 3. Energy Labs does not agree with that logic. The ammonia trigger value is 10 but the MDL is 20. For silver the RRV goes down six times from 3 to 0.5, which is going to be very difficult to test. A lot of these analyses are on the bottom end of the scale for the equipment and methods that are used in commercial labs. It is easy to obtain in academics when using DI water and spiking it with the element that is being tested for. If a lab receives something with a different matrix or ground water the lab has to sort through a lot of stuff and some of these parameters are going to be very difficult to get down to, mercury is one of them. Mercury is going to be dropped down 5 times from 0.6 to 0.01 ppt., but the human health standard for mercury is only 0.05. Energy Labs does not agree with these required reporting value. On comment 19 of WQB-7 regarding the required reporting values the Department struck out "in routine sampling." This is a key element in regards to what is being done. Energy Labs also dislikes the idea of Montana laboratories being struck out.

Don Allen would like to second what Scott Summers said. This points out a bigger issue. For air quality the public and interested groups who understand the rules and regulations have the opportunity to get together and discuss the specifics of the rules with people from the

Department. This has not been available for water quality program and these WQB-7 issues is an example that proves there is a need for these discussion sessions. This is important because it should involve the people who are out on the ground, understand these issues, and work with it all the time from a practical standpoint, vs. operating in a vacuum. It may be that all the publications are great that all the standards are from but some of these changes such as the fish consumption rate has a multiplying effect on some of the parameters. Yet the public has not had an opportunity with the Department to discuss those kinds of complications with these rules. On the WQB-7 and MPDES fee rules, WETA would urge this Council to not go forward with any recommendations to the Board as the information is presented. In lieu of that this Council should recommend the Department to sit down with interested parties and sort these issues out. It may be that the interested parties may not be able to come to any understanding of the issues but at least they will have an opportunity to talk about them. Bonnie Lovelace will be receiving a letter today regarding the ORW issue indicating that taking any money out of the fee account and putting it towards this EIS would be illegal.

Shannon Dunlap said that on a few of these issues there is enough concern that the Council should not recommend the Department to move forward with the WQB-7 rulemaking.

Barb Butler said that the RRV is an old issue that has come up before. Some of the values that the labs are going to be held to are almost impossible to get in a laboratory environment depending upon the type of water is being sampled. These values are more an academic exercise vs. something that is achievable or real world.

Terry McLaughlin said that with all the elements that were contained in today's request for the triennial review, the Council has not had enough time to understand all the implications. In a lot of instances the Department will adopt EPA guidance as a matter of course. In this particular case there are so many separate elements that are rolled into one major proposal, it is questionable if the Council can make any kind of recommendation at this point.

Shannon Dunlap agrees that there is enough concern on some of these items that the Council needs to look closer at them before making a decision.

Scott Seilstad agrees that there are some issues in the proposed changes in regards to agriculture concerns that would require taking a closer look at the proposed changes.

Bob Bukantis said that the Department would be willing to give the Council more time and give more detailed presentation of the specific concerns.

Terry McLaughlin said that it might be possible to have another meeting to cover the WPB-7 issues and the MEPA fee rules. It may not be possible to accomplish the meeting before the 10th, but a conference call may be in order. The WQB-7 is an issue that should take some additional time for the Council to understand it.

Peggy Trenk said that it was a good idea to have a special meeting for WQB-7. Would it be possible for the Department to meet with some of the interested parties before the Council meets again?

Bob Bukantis suggested that this could be put on as an agenda item for the August Council meeting. This would allow the Department time to hold stakeholder meetings between now and August.

Terry McLaughlin said the Council does not have an action to propose to the Department at this time other than it become an agenda item for the next regular Council Meeting and not have a special meeting in the interim. The Council would like a primer on item 2 of the memorandum to explain to the Council why when EPA does something at that level it reverberates down through the state and causes the kind of impact to water quality standards that it does. The Council would like to understand the rationale for lowering the hardness for those standards affected under item 3.

Peggy Trenk asked how much flexibility does the Department have on changing the fish consumption rate? Does the Department have the ability to make a differential for a different parameter? If there is some discussion regarding one parameter, mercury for example, can that be segregated out and not adopt the 17.5 mg/day consumption rate.

Bob Bukantis said that in terms of human health standards, if the Department does not adopt EPA's methodology in numbers, the Department must develop the scientific basis for the number the state does choose to adopt. There was a recommendation to adopt Montana's fish consumption rate. The Department could do that and EPA acknowledges that, but it becomes a workload issue to develop the scientific basis for specific Montana standards. It is worth having discussions on this with interested parties so they are comfortable and understand the changes.

General Public Comment on Water Pollution Control Issues

Bud Clinch said that in regards to the proposal relative to increasing permit fees as it relates to funding the Gallatin EIS, the records will indicate that the Montana coal companies have always stepped to the plate and taken their full share associated with the various permit fees, the EIS associated with the permitting of those mines and the amendments that have taken place over the past decades. Because of that history, the Coal Council finds it inappropriate for the Department to proceed with the approach of increasing the permit fees to fund something that in no way can a logical connection be made between that and the permitted action of our companies. Whether the Department chooses to handle the entire amount in a fee increase or as a one time only fee, both approaches are inappropriate.

The Coal Council would like to remind WPCAC to reflect back on this legislative session. It is important to know the Companion Bill SB 376, which dealt with this issue was debated in numerous forms at the legislature and was defeated. What WPCAC is now dealing with is an attempt to get something out of this session by the proponents of that bill in the light of the fact that there could not be a majority approval at the legislature. While the Coal Council is sympathetic to the dilemma DEQ finds themselves in with the need to do something and no appropriation, please reflect on the fact that the state just completed a legislative session that had the greatest increase in spending in the history of Montana and the legislators chose to not make this one of the priority items. This should send a policy message issue to the Department. This is not to say that the project is not worthwhile or should not go forward, but tacking it on the

backs of permittees that are in no way associated with it is an inappropriate mechanism. The Coal Council would urge DEQ to look at other avenues to find funding for it.

Bonnie Lovelace said that the Department agrees with this standpoint and is looking for other funding. The legislature did weigh in by assigning that spending authority to the MPDES permitting program.

Agenda Items for Next Meeting

No additional agenda items proposed for the next meeting other than the WQB-7 item and the fee discussion at this time.

Terry McLaughlin adjourned the meeting at 1:00 p.m.